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November 12, 1998

VIA HAND DELIVERY

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: BellSouth's Petition for Reconsideration and Clarification: *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121

Dear Ms. Salas:

Please find enclosed for filing an original and 11 copies of BellSouth's Petition for Reconsideration and Clarification.

Please date stamp the extra copy and return it to the individual delivering this package. Thank you for your assistance in this matter.

Sincerely,

Austin C. Schlick /kbs

Austin C. Schlick

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	CC Docket No. 98-121

To: The Commission

BELLSOUTH'S PETITION FOR RECONSIDERATION AND CLARIFICATION

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November 12, 1998

EXECUTIVE SUMMARY

In its Memorandum Opinion and Order in this proceeding, the Commission provided "guidance as to what BellSouth must do to comply with the market opening measures mandated by Congress" and reviewed "all aspects of BellSouth's application."[1] That broad review will guide interested parties in the future, since the Order is intended to be "a clear road map for BOCs to receive approval to offer long distance service in their regions."[2] For this reason, it is imperative that the Commission's "road map" accurately reflect the record facts underlying BellSouth's Application, as well as the legal terrain that BellSouth and other BOCs must navigate. BellSouth accordingly seeks reconsideration and clarification of a small number of the Order's conclusions that appear inconsistent with the 1996 Act.

Track A Compliance via PCS. In concluding that BellSouth failed to show that PCS service in Louisiana "currently competes" with BellSouth's wireline service, the Order inexplicably dismissed substitution for additional telephone lines, suggested a geographic scope requirement the Commission has elsewhere rejected, and imposed an improper metric test. BellSouth demonstrated that PCS competes with BellSouth's wireline service in Louisiana, and therefore satisfies the requirements of Track A. On reconsideration, the Commission should so find.

OSS. The Order appears at times to confuse access to OSS with performance in provisioning underlying facilities or services. The Order's reliance on average installation interval

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[1] Memorandum Opinion and Order, Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Louisiana, CC Docket No. 98-121, FCC 98-271, ¶¶ 1, 6 (rel. Oct. 13, 1998) ("Order").

[2] Order, Separate Statement of Commissioner Gloria Tristani.

data as a basis for concluding that BellSouth's OSS are deficient illustrates this confusion. The Order's OSS discussion also rested on important factual errors regarding the capabilities of some of BellSouth's OSS interfaces, which should be stricken on reconsideration.

Access to Network Elements. The Order assumes that BellSouth limits CLECs to collocation as the only method for gaining access to unbundled network elements. That is incorrect, as the record shows. The Commission should find that BellSouth provides all required methods of access.

Unbundled Switching. The Order also incorrectly concludes that BellSouth is legally obligated to provide vertical features that are not available to BellSouth's retail operations. Such a requirement exceeds the 1996 Act's nondiscrimination requirements. Regarding billing data for switch usage, the Commission agreed that BellSouth could provide a "reasonable surrogate" for terminating usage data, but in the Order wrongly refused to accept the surrogate method provided by BellSouth.

Directory Assistance and Operator Services. The Order concludes that, due to trunking arrangements, BellSouth failed to demonstrate compliance with the requirement that it allow CLECs to brand services provided by BellSouth for CLEC customers. However, the very same trunking arrangements used by CLECs are used by BellSouth in its own retail operations.

Interim Number Portability. The Order contends that the Commission has the authority to set prices for interim number portability. However, as the Eighth Circuit has held, Congress did not intend for the FCC to issue any binding pricing rules affecting local services under sections 251 and 252.

Section 272. The Order suggests that BellSouth must comply with section 272 prior to receiving section 271 approval. Such a requirement is contrary to the plain language of section

272. In addition, the Order imposes disclosure requirements that have no basis in the Act and are inconsistent with prior decisions of the Commission.

Public Interest. The Order's brief discussion of the public interest inquiry suggests that the Commission may use this inquiry to assert federal jurisdiction over matters reserved to the states. Furthermore, the 1996 Act precludes the Commission, "by rule or otherwise," from extending the terms of the competitive checklist, 47 U.S.C. § 271(d)(4), and thus prohibits the Commission from imposing de facto requirements in such areas as performance measurements and standards. Again, the Commission should reconsider its holding.

By addressing the above issues, the Commission will render the Order a more accurate and usable blueprint for interLATA competition.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	CC Docket No. 98-121

To: The Commission

BELLSOUTH'S PETITION FOR RECONSIDERATION AND CLARIFICATION

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. ("BellSouth") hereby seek reconsideration and clarification of the Commission's Order. In the Order, the Commission commendably undertook "to discuss every element of the competitive checklist, as well as the public interest."[1] BellSouth thus agrees that the Order "constitutes a significant step" in the section 271 process. Id. However, some portions of the Order are premised on factual misunderstandings, while others may be read to violate the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 ("1996 Act" or "Act"), and exceed the Commission's authority. Clarification, and in some cases reconsideration, of the Order therefore is warranted to ensure consistency with the 1996 Act and to guarantee that the Order will function as an accurate road map for section 271 compliance.

[1] Order, Separate Statement of Commissioner Michael K. Powell at 1.

DISCUSSION

I. PCS SERVICE CURRENTLY COMPETES WITH WIRELINE SERVICE IN LOUISIANA

The Order affirmed that broadband PCS satisfies the definition of telephone exchange service for purposes of section 271. Order, ¶ 28. The Commission concluded, however, that BellSouth failed to show that consumers in Louisiana actually substitute PCS service for traditional wireline service. Id. ¶ 24. In reaching this conclusion, the Commission refused to credit the very types of evidence Chairman Kennard had indicated would be persuasive.[2] The Commission also suggested that a BOC relying on PCS to satisfy the requirements of Track A must satisfy geographic-scope and metric tests for local competition, both of which (as the Commission has held) are precluded by the 1996 Act. The Commission should reconsider this discussion found at paragraphs 31 through 43 of the Order, and credit BellSouth's evidence and find that BellSouth's Louisiana Application has satisfied the requirements of Track A.

In support of its showing that Louisiana consumers are substituting PCS service for traditional wireline service, BellSouth provided pricing and usage studies, identified specific customers who had in fact substituted PCS for wireline service, and pointed to marketing efforts of PCS providers to induce wireline customers to substitute PCS service for wireline service.[3] No party came forward with any evidence to rebut BellSouth's fundamental conclusions that some

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[2] Letter from William E. Kennard to Senator John B. Breaux, dated July 7, 1998, at 1 (evidence to demonstrate that PCS is used to replace, rather than merely supplement, traditional wireline service "could include documentation such as studies or other objective analysis, identifying the customers that have actually or would consider replacing their wireline service with PCS service, and a showing that the marketing efforts of the PCS provider aim to induce such replacements.") ("July 7th Kennard Letter").

[3] See BellSouth Br. at 9-15; Banerjee Aff. (App. A, Tab 1); M/A/R/C Study (attached to Denk Aff., App. A, Tab 6); Louisiana PCS Study (App. D, Tab 14); BellSouth Reply Br. at 10-14; Banerjee Reply Aff. (Tab 1); Denk Reply Aff. (Tab 4).

Louisiana consumers are substituting PCS service for wireline service, and that for additional consumers, such substitution is justified on the basis of price alone.

In its discussion of PCS, the Commission asserted that the "most persuasive evidence" concerning competition between PCS and wireline service is "that customers are actually subscribing to PCS in lieu of wireline service at a particular price." Order, ¶ 32. BellSouth provided this evidence. Two hundred and two PCS users were surveyed for BellSouth's M/A/R/C study, and as part of the study BellSouth identified by name eleven individuals who indicated that they had actually substituted PCS for wireline service.[4]

The Commission discounted the M/A/R/C study in part because "there is no evidence that the New Orleans respondents are similar to the state-wide PCS user population." Order, ¶ 37. However, Track A "does not support imposing a geographic scope requirement."[5] Thus, even if the conclusions of the M/A/R/C study were relevant only to the New Orleans area, this would not lessen the study's sufficiency as evidence of actual competition within Louisiana.

The Commission also discounted the existence of consumers in Louisiana who substitute PCS for wireline service – or who would find it advantageous to use PCS instead of wireline

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[4] Denk Aff. at 2, 10-13. All PCS subscribers who participated in the M/A/R/C survey were asked which of five reasons best described why they had established service with a PCS provider. These reasons were: (1) "I wanted to replace my residential wireline phone with mobile service for all voice communications;" (2) "I wanted to add another line at home and decided to add mobile service instead of another wireline;" (3) "I was getting phone service for the first time for my residence and decided to use mobile service instead of wireline service;" (4) "I wanted a mobile option in addition to my residential wireline phone, and decided to add mobile service;" and (5) "I wanted to replace my current cellular service with this mobile service." Id. at 6. Given these mutually exclusive choices, the Commission's criticism that the survey does not "distinguish clearly between the substitution of PCS for wireline service and the use of PCS as a complement to wireline service" is unfounded. Order, ¶¶ 37, 39; see Denk Reply Aff. ¶ 15.

[5] Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543, 20584, ¶ 76 (1997) ("Michigan Order").

service – by focusing on the percentage of wireline callers in Louisiana this group represents. See Order, ¶¶ 37, 40, 42. The Commission rejected as too small the "one-half of 1 percent of BellSouth's wireline customers" who, BellSouth's opponents conceded, indisputably "'have a calling pattern and use of vertical services that could be purchased more cheaply from a PCS provider.'" Id., ¶ 42 (quoting Sprint's Shapiro and Hayes). Although the Commission stated in a footnote that its discussion "is not, in any way, intended to suggest the use of a market share test for entry under Track A," id., ¶ 40, n.94, it is hard to read the Order any other way. This is particularly true where the Commission used phrases such as "we cannot conclude that any significant number of wireline exchange customers is likely to consider switching to PCS service based on price." Id., ¶ 40 (emphasis added). Such language cannot be reconciled with the Commission's finding that in order to be a "competing provider" for Track A purposes, a new entrant does not have to "serve a specific market share." Michigan Order, 12 FCC Rcd at 20585, ¶ 77. A BOC relying on PCS substitution to comply with Track A need only demonstrate that substitution is taking place, not that a particular number of consumers has substituted (or would be expected to substitute) the two services.

The Commission also suggested that purchasing PCS service as a substitute for an additional wireline does not constitute substitution for purposes of Track A. Order, ¶ 31. According to the Order, "[m]any business and residential customers subscribe to broadband PCS service without reducing the amount of wireline local telephone service to which they subscribe." Id., ¶ 31 n.71. This assumption formed the basis of the Commission's criticism that the M/A/R/C study "disguises" the complementary nature of PCS. Id., ¶ 35.

The M/A/R/C study expressly distinguished between consumers who were replacing their wireline service with PCS, and those who were adding PCS instead of adding a second wireline. It

revealed that for many consumers, PCS replaces the wireline service that the consumer otherwise would have ordered. Denk Aff. at 6; see supra n.4. The M/A/R/C study thus proved that substitution of PCS for additional wireline service is in and of itself an "actual commercial alternative" to BellSouth. Michigan Order, 12 FCC Rcd at 20585, ¶ 77.

Finally, the Commission, which accepted at face value various criticisms of BellSouth's Application from AT&T, was unwilling to accept AT&T's representations that the Digital One Rate Plan is a viable substitute for wireline service.[6] In concluding that "there is not sufficient evidence at this time to show that AT&T's Digital One Rate Plan will have any significant effect" on PCS substitution for wireline service, Order, ¶ 43, the Commission rejected one of the specific types of evidence that Chairman Kennard had indicated would be persuasive. See July 7th Kennard Letter at 1 (BOC evidence of substitution of PCS for wireline service "could include . . . a showing that the marketing efforts of the PCS provider aim to induce such replacements.").

BellSouth demonstrated in its Application that PCS service competes with wireline service in Louisiana. The Commission therefore should reconsider its discussion of BellSouth's PCS evidence, found at paragraph 31 through 43 of the Order, and find that BellSouth's Louisiana Application has satisfied the requirements of Track A.

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[6] See BellSouth Br. at 14. Indeed, AT&T has recently introduced a trial pricing plan in Texas that is designed to "encourage people to buy mobile telephone service rather than a second home line." AT&T Tests Mobile Phone Promotion, The Dallas Morning News, Nov. 12, 1998, at 1D. According to an AT&T spokesman, "[r]ather than having two immovable wireline phones in your house, you can use our service and have the flexibility of wireless benefits for about the same costs." Id.

II. THE ORDER IMPERMISSIBLY EXTENDS THE CHECKLIST REQUIREMENT OF NONDISCRIMINATORY ACCESS TO OSS AND RELIES ON INACCURACIES REGARDING BELLSOUTH'S OSS

The Order also imposes improper obligations on BellSouth's provision of access to OSS – either by inappropriately extending OSS obligations to include unrelated activity, or because the Commission misunderstood the workings of BellSouth's OSS. The Commission should correct these errors.

OSS and Average Installation Intervals. BellSouth and other incumbent LECs currently are obligated to provide nondiscriminatory access to their OSS under section 251(c)(3) of the Act. Iowa Utils. Bd. v. FCC, 120 F.3d 753, 808-09 (8th Cir. 1997), cert. granted, sub nom. AT&T Corp. v. FCC, 118 S. Ct. 879 (1998). Yet what happens after CLECs' requests have passed through these support systems is governed not by the Act's OSS provisions, but rather by the checklist requirements (if any) that address the underlying item ordered. The right of access to OSS cannot be extended to trump those independent checklist requirements.

For example, the Commission reasoned that because average installation intervals for CLEC resale customers were greater (for some service categories) than for BellSouth's retail customers, it could draw "a general conclusion" that BellSouth's OSS fail to provide "equivalent access." Order, ¶ 126. Yet the speed and accuracy with which a BOC fills a request that has passed through its OSS does not reveal anything about access to the OSS. There are any number of factors – the CLEC or end user declines the first available installation date, or the end user is not home at the time of the scheduled work, to cite just two examples – that affect the average interval measurement yet have nothing to do with access to OSS. The Commission should clarify on reconsideration that it will not seek to draw conclusions regarding a BOC's OSS from average installation interval data or other similar provisioning measurements.

Flow-Through Measurements and Complex Services. The Order suggested that BellSouth's exclusion of complex orders from flow-through data was inappropriate. Id., ¶ 111 n.366. However, complex orders receive the same manual handling regardless of whether they are placed by a BellSouth retail customer or a CLEC. Stacy OSS Aff. ¶ 137 (App. A, Tab 22). Where CLECs' complex service orders are processed "in substantially the same time and manner" as BellSouth's analogous retail orders, the nondiscrimination standard is fully satisfied.[7] There is no need to prove nondiscrimination indirectly by including these orders in flow-through calculations. The Commission therefore should clarify that flow-through calculations need not include orders that are processed manually when submitted by either a BOC's retail operations or its CLEC customers.

Maintenance and Repair Interfaces. The Commission should also correct a number of significant errors in the Order's analysis of BellSouth's electronic maintenance and repair interfaces. First, BellSouth did not "concede[]" that its retail operations derive "superior integration capabilities" from the Trouble Analysis Facilitation Interface ("TAFI"), and the Order's suggestion that CLECs are unfairly limited in their use of TAFI (raised for the first time in the Commission's third review of this interface) is unwarranted. Order, ¶ 151. Once TAFI validates that a CLEC is accessing one of its own customer's accounts, TAFI functions for the CLEC just as it does for BellSouth's retail operations. Stacy OSS Aff. ¶¶ 160-64. The only difference is that CLECs have the advantage of using a single TAFI interface for both business

[7] Order, ¶ 87; First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15763-64, ¶ 518 (1996) ("Local Interconnection Order"), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (1998).

and residential functions, whereas BellSouth retail representatives must use one TAFI interface for business customers and another TAFI interface for residential customers. Id. ¶ 163.

The Order also concluded that another of BellSouth's maintenance and repair interfaces, Electronic Communication Trouble Administration ("ECTA"), does not provide "parity to competitors," although it complies with the industry standard for local exchange trouble reporting and notification and was developed in cooperation with AT&T. Order, ¶¶ 156-57; BellSouth Br. at 30; BellSouth Reply Br. at 39. The Commission found that ECTA does not provide the same level of functionality as TAFI. Order, ¶ 157. Contrary to the Order's suggestion, however, BellSouth does not use TAFI for all maintenance and repair functions. BellSouth uses another interface (Work Force Administration/Control ("WFA/C"), which is available to CLECs via ECTA) for designed services trouble reports.[8] CLECs can use TAFI when BellSouth would use TAFI for analogous retail trouble reports. Stacy OSS Aff. ¶¶ 163, 172-177. The Order's suggestion that ECTA's capabilities must match those of TAFI is therefore incorrect.

In addition, the functionalities offered by ECTA were based on national standards at the request and with the consent of AT&T and MCI. BellSouth Br. at 30; BellSouth Reply Br. at 39. The Order's criticisms of ECTA's capabilities create a strong disincentive for BOCs to cooperate with CLECs in the development of industry-standard interfaces or other interfaces that CLECs request, if to do so is to run the risk of being faulted for not including capabilities the CLECs themselves have determined they do not need or want.

[8] Also to the suggestion of the Order, use of ECTA is not limited to designed services. Order, ¶¶ 153-154. Rather, ECTA, like TAFI, can be used to enter trouble tickets into BellSouth's Line Maintenance Operating System ("LMOS"), which then dispatches the trouble reports to the

III. BELLSOUTH DOES NOT LIMIT CLECS TO COLLOCATION

In its review of BellSouth's ability to provide CLECs with access to unbundled network elements, the Commission relied on an incorrect statement of BellSouth's position. Specifically, the Commission assumed that BellSouth improperly limits CLECs to collocation "as the only method for gaining access to and recombining network elements." Order, ¶¶ 164, 168-70. This is incorrect. As BellSouth explained in its Application, while collocation is the only method of access contemplated by the 1996 Act, BellSouth will negotiate, through the Bona Fide Request process, other methods of access that are technically feasible and consistent with the Eighth Circuit's holdings and other applicable legal rules. See Varner Aff. ¶¶ 18-22 (App. A, Tab 25); Varner Reply Aff. ¶¶ 12-19 (Tab 14). Thus, BellSouth is in compliance with sections 51.5 and 51.321(b)(1) of the Commission's Rules, as well as section 251(c)(3) of the Act.

The Order also suggested that BellSouth failed to offer sufficient evidence that it provides collocation in a "timely fashion." Order, ¶ 72. The Order indicated that the intervals to which BellSouth has committed may be inadequate, but the Commission did not make such a finding or provide a "safe harbor" interval with which BellSouth could comply. Id. BellSouth demonstrated that the provisioning intervals to which it has committed – and which it has satisfied – are comparable to the intervals established throughout the industry. Tipton Reply Aff. ¶ 10 (Tab 13). Since there is no retail analog for the provisioning of collocation space, it is difficult to conceive of evidence that could be more revealing of what CLECs require to compete than the intervals that have been negotiated and arbitrated by LECs, CLECs, and state commissions throughout the United States. Furthermore, BellSouth's intervals were acceptable to CLECs in Louisiana that

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appropriate Installation and Maintenance Work Group on a nondiscriminatory basis. Stacy OSS Aff. ¶¶ 161-163.

sought collocation, which strongly suggests that they are adequate to allow those CLECs to compete.[9]

The Commission should approve the intervals provided by BellSouth. If the Commission is unwilling to do so, however, it should at least indicate the precise intervals that it believes BellSouth must satisfy. The Commission's vague disapproval of BellSouth's intervals provides an inadequate road map.

IV. THE ORDER MISSTATED BELLSOUTH'S OBLIGATIONS REGARDING UNBUNDLED LOCAL SWITCHING

In its discussion of BellSouth's switching obligations, the Order indicated that a BOC must provide all vertical features loaded in the software of BellSouth's switch, even if these features are not offered to BellSouth's retail customers. Order, ¶ 217. The Order also concluded that BellSouth failed to satisfy CLECs' needs for actual terminating usage data. Id., ¶ 233. These conclusions are inconsistent with the 1996 Act.

Vertical Features. Through the Bona Fide Request process, BellSouth voluntarily will provide CLECs with vertical features that are loaded in BellSouth's switch, whether or not BellSouth offers those features on a retail basis. Varner Aff. ¶ 125. BellSouth is not required to make these inactive features available, however, since such a requirement would go beyond parity and require BellSouth to alter its network by activating these features solely for the benefit of CLECs seeking UNEs. A BOC is only required to provide CLECs access to its "existing network – not to a yet unbuilt superior one." Iowa Utils. Bd., 120 F.3d at 813.

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[9] The Order also hinted that BellSouth might be required to offer intervals based on the actual completion of collocation space. Order, ¶ 72. Such intervals would require BellSouth to include within its time commitments the time needed for activities (such as the processing of licenses by governmental authorities) that are beyond BellSouth's control.

The Order contends that because the alteration of a BOC's network needed to activate features is not "substantial," it is therefore required. Order, ¶ 218. The Act and the Eighth Circuit's decision draw no such distinction. Accordingly, the Commission should reconsider its imposition of a legal requirement that currently inactive switch features be implemented solely for use by CLECs.

Collection of Reciprocal Compensation Payments. CLECs require the capability to bill and collect reciprocal compensation from BellSouth and other carriers. See id., ¶ 232. The Commission therefore has held that a BOC must provide a purchaser of unbundled local switching with either actual terminating usage data or a "reasonable surrogate" for this information. Id., ¶ 233.

Contrary to the Order, id. ¶ 234, BellSouth provides such a reasonable surrogate during the interim period until terminating usage data becomes available. As stated in BellSouth's Application, a CLEC that uses BellSouth UNEs to originate traffic will be charged, as the proxy for reciprocal compensation payments, UNE rates for the BellSouth switching and transport facilities used to terminate the traffic. Varner Aff. ¶ 192. The amount of the charge will be based upon usage data collected at the originating end of the call. This arrangement is appropriate because the Louisiana PSC based reciprocal compensation rates on UNE rates. See Pricing Order Attach. A § D (App. C, Tab 293); AT&T Agreement Table 1 n.1 (App. B, Tab 30). Of course, not all of the CLEC-originated traffic terminates to BellSouth end users; some of the CLEC's originating usage reflects traffic terminated by another CLEC. But recovering UNE-based termination charges from the originating CLEC is appropriate for this traffic as well. This is because the terminating CLEC will seek reciprocal compensation from BellSouth (which delivered the traffic) rather than the CLEC that actually originated the call. BellSouth's UNE-rate

charges to the originating CLEC represent the amount of the reciprocal compensation payment made by BellSouth to the terminating CLEC on the originating CLEC's behalf. At the end of the day, the terminating CLEC receives reciprocal compensation based on the correct amount of traffic and the originating CLEC pays it.

Conversely, a CLEC using BellSouth UNEs to terminate traffic is unable to tell whether that traffic originated with BellSouth or another CLEC using BellSouth UNEs. In this situation as well, BellSouth's surrogate method uses the originating usage records that are available to calculate the appropriate reciprocal compensation payments. In this case, the originating usage represents the sum of (1) BellSouth's own terminated traffic and (2) traffic from CLECs that pay termination fees to BellSouth. By paying reciprocal compensation to the terminating CLEC for both categories of traffic, at the UNE rates, BellSouth ensures that the terminating CLEC receives the appropriate payment.

BellSouth's method ensures CLECs using UNEs receive the payments to which they are entitled. This eliminates the need for exchanging actual (or assumed) usage data. To insist, as the Order does, that BellSouth nevertheless provide some sort of usage information is to embrace a formalism that has no practical use or value.

BellSouth does not contend that as a matter of law it is not obligated to provide CLECs with usage data, but only that BellSouth's approach is a "reasonable surrogate" that treats all carriers fairly and removes the need for this usage data. Furthermore, the Commission's concern that a future difference between UNE rates and reciprocal compensation rates might render BellSouth's approach unreasonable, see Order, ¶ 234 n.750, does not undermine BellSouth's showing of checklist compliance under the rates actually approved by the Louisiana PSC.

V. THE ORDER IMPOSES REBRANDING REQUIREMENTS THAT IGNORE TECHNICAL LIMITATIONS AND ARE INCONSISTENT WITH EXISTING INTERCONNECTION AGREEMENTS

In evaluating BellSouth's duty to provide CLECs with nondiscriminatory access to operator services, directory assistance, and directory listings, the Commission imposed two obligations with which BellSouth cannot comply – not because it is unwilling to do so, but because it is impeded from doing so by a technical limitation and contractual obligations, respectively.

Rebranding. The Order concluded that BellSouth failed to demonstrate that it complies with rebranding requirements. Id., ¶ 246. However, as BellSouth explained in its Application, BellSouth's operator services and directory assistance systems can only identify the source of traffic that is carried over dedicated trunks. Milner Aff. ¶ 85 (App. A, Tab 14). Thus, branding can only be offered to CLECs that use dedicated trunks. Id.

While the Order relied upon MCI's suggestion that BellSouth could "'simply route the calls to its operator services platform over its usual trunk groups and brand them on the basis of the Automatic Number Identification of the call,'" Order, ¶ 247 n.783 (quoting MCI), BellSouth tested the method suggested by MCI, and found that it does not allow branding with an acceptable degree of reliability. Milner Reply Aff. ¶ 3 (Tab 7).

BellSouth's method of rebranding is nondiscriminatory because BellSouth, which also delivers all of its traffic over dedicated trunks from each end office to BellSouth's directory assistance and operator services platforms, uses the same trunking architecture as CLECs. While some CLECs may not be able to realize economies of scale over dedicated trunks due to low traffic volumes, see Order, ¶ 247, this does not constitute discrimination by BellSouth. Indeed, BellSouth faces the same issue in its central offices that have relatively low traffic volumes.

VI. THE COMMISSION DOES NOT HAVE PRICING AUTHORITY OVER INTERIM NUMBER PORTABILITY

In its Order, the Commission insisted that it has "pricing authority" over interim number portability. Order, ¶ 289. In support of this conclusion, the Commission pointed to the Eighth Circuit's acknowledgment that the Act allows the Commission "to issue regulations" regarding number portability, resale, unbundled network elements, numbering administration, exchange access, and treatment of comparable carriers as incumbents. Id. (citing Iowa Utils. Bd., 120 F.3d at 802 n.23). However, the Eighth Circuit was emphatic that the Commission's regulations may not extend into the realm of pricing. "[T]he terms of the Act clearly indicate that Congress did not intend for the FCC to issue any pricing rules, let alone preempt state pricing rules regarding the local competition provisions of the Act." Iowa Utils. Bd., 120 F.3d at 798-99 (emphasis added); see also id. at 796 ("the Act plainly grants the state commissions, not the FCC, the authority to determine the rates involved in the implementation of the local competition provisions of the Act."). The Commission itself has acknowledged that the Eighth Circuit "ordered the Commission 'to confine its pricing role under section 271(d)(3)(A) to determining whether applicant BOCs have complied with the pricing methodology and rules adopted by the state commissions and in effect in the respective states in which such BOCs seek to provide in-region, InterLATA services.'" Order, ¶ 60 (citation omitted).

The Louisiana PSC has found that BellSouth's interim number portability offerings comply with the requirements of the Act, as well as those imposed by the PSC itself.[10] The state commission's determination that BellSouth is in compliance with all requirements regarding

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[10] Order U-22252-A, Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Docket U-22252, at 13 (LPSC rel. Sept. 5, 1997) (App. C, Tab 136).

interim number portability, including pricing, precludes further pricing inquiries by this Commission.

VII. THE COMMISSION SHOULD CLARIFY THAT THE ACT DOES NOT REQUIRE SECTION 272 COMPLIANCE PRIOR TO SECTION 271 AUTHORIZATION

In its Order, the Commission acknowledged that the evidence of section 272 compliance contained in BellSouth's Application should be examined simply "as indicators of BellSouth's future behavior." Order, ¶ 321. This is in keeping with the plain language of the Act. Section 271(d)(3)(B) employs the future tense, authorizing the Commission to ensure that "the requested authorization will be carried out in accordance with the requirements of section 272" (emphasis added). And while the "past and present behavior" of BellSouth may be "highly relevant" in making predictions about future section 272 compliance, the 1996 Act does not empower the Commission to require section 272 compliance before interLATA authorization. 47 U.S.C. § 271(d)(3)(B).

Yet while the Commission has acknowledged in theory that its evaluation under section 271(d)(3)(B) is only "'a predictive judgment'" about future compliance with section 272, Order, ¶ 321 (citation omitted), the Order appears to have ignored this limitation. For example, because BellSouth does not have to comply with section 272 until it provides in-region, interLATA services after section 271 relief, there is no statutory basis for insisting that BellSouth must comply with section 272's nondiscrimination safeguards even before it receives section 271 authorization. See id., ¶¶ 343, 345, 349.

Moreover, the Order requires a level of disclosure as part of a section 271 application that is inconsistent with the disclosure requirements the Commission has already established, and, for that matter, with section 272 itself. Id., ¶ 337. BellSouth does not object to disclosing

information about all transactions between BST and BSLD. Indeed, all such transactions have been disclosed. See Wentworth Aff. ¶ 14. Transactions that occurred prior to August 12, 1997 were carried out and reported in accordance with the then-applicable affiliate transaction rules, while transactions after August 12, 1997 have been carried out and reported in accordance with the Commission's Accounting Safeguards Order and Non-Accounting Safeguards Order. Cochran Aff. ¶¶ 22, 26. [11] This reporting distinction has been approved by the Commission. See Michigan Order, 12 FCC Rcd at 20736, ¶ 371 (holding that a BOC "need not disclose transactions in a manner specified in the Accounting Safeguards Order prior to that order's effective date").

Yet the Commission's approved accounting regimes do not require the level of record-keeping or reporting that the Commission now has suggested must be provided as part of a section 271 application. Order, ¶ 337. For example, BellSouth's systems have not been configured to record the "type of personnel assigned" to a project, "the level of expertise of such personnel," or whether "special equipment" was used to provide the service. Id. Instead, BellSouth's systems satisfy all applicable requirements by recording a description of the service provided, the total amount billed for the service, and the period of the service.[12] For current transactions, moreover, the rates that BSLD pays BST are not based on units of labor, in keeping with the provision of the Accounting Safeguards Order that allows such work to be calculated on

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[11] See Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, 11 FCC Rcd 17539 (1996) ("Accounting Safeguards Order"); First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905 (1996) ("Non-Accounting Safeguards Order").

[12] BellSouth's systems are audited to ensure that these recorded data accurately reflect the underlying transactions. See Report and Order, Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, 1330-31, ¶¶ 255-257 (1987) ("Joint Cost Order").

a fair market value basis.[13] Quite simply, BellSouth cannot report information consistently in its section 271 application, section 272 disclosures, CAM, and ARMIS disclosures, if the Commission establishes one set of rules for section 271 applications, and another set for those other purposes.[14]

The Commission's new disclosure requirements cannot bear on BellSouth's future compliance with the rules implementing section 272, because these new requirements exceed those rules. Nor could the new requirements be justified as necessary to protect against cross-subsidization. The Commission has determined that its affiliate transaction and accounting safeguards rules are by themselves sufficient to prevent cross-subsidy, so no additional requirements could be imposed in section 271 proceedings on the basis that they are needed to accomplish this same goal.[15]

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[13] See Order ¶ 337; see also Joint Cost Order, 2 FCC Rcd at 1326-28; ¶¶ 224-242; Order, Revisions of ARMIS Quarterly Report, 11 FCC Rcd 22508, 22515, ¶¶ 20, 22 (AAD rel. Dec. 17, 1996)/

[14] See e.g., Joint Cost Order, 2 FCC Rcd at 1326-28; ¶¶ 224-242; Order, Revisions of ARMIS Quarterly Report, 11 FCC Rcd 22508, 22515, ¶¶ 20, 22 (AAD rel. Dec. 17, 1996); Order, ¶ 337.

[15] See e.g., Accounting Safeguards Order, 11 FCC Rcd at 17551, ¶ 28 ("[W]e see no need for additional accounting safeguards designed specifically to prevent predatory behavior by incumbent local exchange carriers. We believe that the accounting rules we adopt here will effectively prevent predatory behavior that might result from cross-subsidization."); id., at 17586, ¶ 108 ("our current affiliate transaction rules generally satisfy the statute's requirement of safeguards to ensure that these services are not subsidized by subscribers to regulated telecommunications services. We have previously concluded that these rules provide effective safeguards against cross-subsidization."); Non-Accounting Safeguards Order, 11 FCC Rcd at 22057, ¶ 315 ("Our affiliate transaction rules, as modified by our companion Accounting Safeguards Order, address the BOCs' ability to engage in improper cost allocation. The rules in this Order and our rules in our First Interconnection Order and our Second Interconnection Order ensure that BOCs may not favor their affiliates."); see also First Report and Order, Access Charge Reform, 12 FCC Rcd 15982, 16104, ¶ 283 (1997) (price caps protect against cross-subsidization).

The Commission should reconsider the Order's discussion of section 272 reporting requirements and clarify that BOCs need not comply with any additional reporting requirements for section 271 approval.

VIII. THE PUBLIC INTEREST TEST DOES NOT AUTHORIZE ADDING BLANKET REQUIREMENTS REGARDING LOCAL COMPETITION OR SUPERCEDING CONGRESS'S LOCAL COMPETITION PROVISIONS

Extending the checklist's enumerated local competition requirements is a direct violation of section 271(d)(4), which prohibits the Commission "by rule or otherwise," from "extending the terms used in the competitive checklist." See BellSouth Br. at 73-76. Nevertheless, in the Order, the Commission stated that evidence of whether a BOC has agreed to performance monitoring, performance reporting requirements, and self-executing enforcement mechanisms will be considered as part of the public interest inquiry. Order, ¶¶ 363-64. This conflicts with section 271(d)(4) as well as with the Commission's recognition that performance monitoring and standards are properly overseen by the states.[16] Moreover, it is state commissions, and not this Commission, that "retain the primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252." Iowa Utils. Bd., 120 F.3d at 804. The Act empowers the state commissions to reject negotiated interconnection agreements that, in the state commission's view, are inconsistent with the public interest because they do not permit effective enforcement. See 47 U.S.C. § 252(e)(2)(A)(ii). Any attempt by this Commission to force a BOC to include additional enforcement provisions in its interconnection agreements would usurp the authority of state commissions and violate the Act. As the Eighth Circuit has concluded, "nothing

[16] See Notice of Proposed Rulemaking, Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection and, Operator Services and Directory Assistance, FCC 98-72, CC Docket No. 98-56, 1998 WL 180809, at *17-20, ¶¶ 22-26 (rel. Apr. 17, 1998).

in the Act even suggests that the FCC has the authority" over enforcing the terms of intercarrier agreements or the general provisions of sections 251 and 252. Iowa Utils. Bd., 120 F.3d at 804.

The Commission's discussion of the public interest standard (Order ¶¶ 361-66) should be vacated.

CONCLUSION

The Commission has devoted substantial time and resources to providing the BOCs guidance for future section 271 applications. Having invested so much to allow the section 271 process to move forward, the Commission should ensure that it is providing truly reliable guidance, by correcting the legal and factual errors identified above. Failing to do so will only prolong and complicate the process of sparking interLATA competition, and involve the courts in matters that should be resolved by the Commission.

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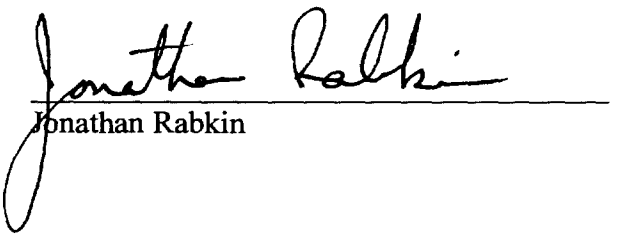
November 12, 1998

CERTIFICATE OF SERVICE

I, Jonathan Rabkin, hereby certify that on this 12th day of November 1998, I caused copies of BellSouth's Petition for Reconsideration and Clarification to be served via first-class United States mail, postage prepaid, upon all parties on the attached service list, except those parties designated with an asterisk, who will be served by hand.



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